

James A. Hennefer (SBN 059490)
HENNEFER & WOOD
425 California Street, 19th Floor
San Francisco, CA 94104-2296
Telephone: (415) 421-6100
Facsimile: (415) 421-1815

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

COAST MARINE & INDUSTRIAL
SUPPLY, INC., a California Corporation;
and OCEANS WEST MARINE &
INDUSTRIAL SUPPLY, INC., a California
Corporation;

Plaintiffs

vs.

REVERE SUPPLY, INC., a Florida
Corporation; RFD BEAUFORT, LTD., a
United Kingdom Company; and RFD
BEAUFORT, INC., an Ohio Corporation;

Defendants

CIVIL NO.

COMPLAINT

- (1) Sherman Act (15 U.S.C. §§ 1 and 2)
- (2) Code of Federal Regulations
(46 CFR §§ 160.151-35 through 57)
- (3) Declaratory Relief (28 U.S.C. §§ 2201-2)
- (4) Cartwright Act
(Calif. B&P Code §§ 16720, 16726-7)
- (5) Unfair Business Practices
(Calif. B&P Code §§ 17200 et seq.)
- (6) Tortious Interference With Business
Relations

DEMAND FOR JURY TRIAL

Table of Contents

1		
2	I.	Nature of this Action 1
3	II.	Jurisdiction, Venue and Commerce 5
4	III.	The Parties 6
5	A.	Plaintiffs 6
6	B.	Defendants 7
7	IV.	Definitions 9
8	V.	The Relevant Markets 10
9	A.	Product Markets 10
10	B.	Geographic Markets 11
11	VI.	General Allegations Applicable to All Claims for Relief 12
12	A.	Background 12
13	B.	Certification Schools Monopoly 13
14	C.	Competitive Alternatives 14
15	VII.	The Unlawful and Anticompetitive Conduct of Revere, RFD Ltd. and RFD Inc. 16
16	A.	Revere's Forcing of New Liferaft and OEM Parts Purchases 16
17	B.	Refusal of Certification Training for RFD/Revere Brands 16
18	C.	Creation of Monopolies for Servicing 17
19	D.	Monopoly Leveraging and Tying of Supplies 18
20	VIII.	Claims for Relief 19
21	A.	<u>First Claim for Relief</u>
22		(Against Revere, RFD Ltd. and RFD Inc.)
23		Contracts Combinations and Conspiracies in Restraint of Trade
24		(Section 1 of the Sherman Act, 15 U.S.C. § 1) 19
25	B.	<u>Second Claim for Relief</u>
26		(Against Revere, RFD Ltd. and RFD Inc.)
27		Exclusive Dealing Arrangements
28		(Section 1 of the Sherman Act, 15 U.S.C. § 1) 22
	C.	<u>Third Claim for Relief</u>
		(Against Revere)
		Per Se Tying
		(Section 1 of the Sherman Act, 15 U.S.C. § 1) 24

1	D.	<u>Fourth Claim for Relief</u>	
2		(Against Revere)	
3		Rule of Reason Tying	
		(Section 1 of the Sherman Act, 15 U.S.C. § 1)	26
4	E.	<u>Fifth Claim for Relief</u>	
		(Against Revere, RFD Ltd. and RFD Inc.)	
5		Monopolization	
		(Section 2 of the Sherman Act, 15 U.S.C. § 2)	27
6	F.	<u>Sixth Claim for Relief</u>	
7		(Against Revere, RFD Ltd. and RFD Inc.)	
8		Attempted Monopolization	
		(Section 2 of the Sherman Act, 15 U.S.C. § 2)	29
9	G.	<u>Seventh Claim for Relief</u>	
10		(Against Revere, RFD Ltd. and RFD, Inc.)	
11		Violations of the Code of Federal Regulations _____	
		(46 CFR §§ 160.151-1, et seq.)	30
12	H.	<u>Eighth Claim for Relief</u>	
13		(Against Revere, RFD Ltd. and RFD Inc.)	
14		Federal Declaratory Judgment Act	
		(28 U.S.C. §§ 2201 et seq. and Fed. R. Civ. Proc. 57)	31
15	I.	<u>Ninth Claim for Relief</u>	
16		(Against Revere, RFD Ltd. and RFD Inc.)	
17		Cartwright Act	
		(California Business & Professions Code §§ 16720, 16726 and 16727) ..	32
18	J.	<u>Tenth Claim for Relief</u>	
19		(Against Revere)	
20		Tortious Interference With Business Relations	
		(State Statutory and Common Law)	34
21	K.	<u>Eleventh Claim For Relief</u>	
22		(Against Revere)	
23		Unlawful, Unfair and Fraudulent Business Acts and Practices	
		(California Business & Professions Code § 17200 et seq.)	35
24	VIII.	<u>Prayer for Relief</u>	37
25		DEMAND FOR JURY TRIAL	39

1 COME NOW plaintiffs COAST MARINE & INDUSTRIAL SUPPLY, INC. (“COMAR”)
2 and OCEANS WEST MARINE & INDUSTRIAL SUPPLY, INC. (“Oceans West”) by and
3 through their undersigned counsel and, demanding a jury trial as to all issues triable by a jury,
4 allege and state their complaint against defendants REVERE SUPPLY, INC. (“Revere”), RFD
5 BEAUFORT, LTD. (“RFD Ltd.”) and RFD BEAUFORT, INC. (“RFD Inc.”) as follows:

6 **I. Nature of this Action**

7 1. This is an action brought by plaintiffs, which sell and provide certified service for
8 commercial and leisure inflatable liferafts (“liferafts”), against defendants, which manufacture and
9 distribute certain brands of liferafts and which have monopoly control over certification for
10 servicing such liferafts. The action involves misuse by defendants of a monopoly for servicing
11 their brand of liferafts, which is granted by Title 46 of the Code of Federal Regulations. This
12 monopoly is being used to force plaintiffs and others into unwanted purchases of liferafts and other
13 goods, all at supracompetitive prices. It is also being used to foreclose markets from the
14 competitive alternatives provided by plaintiffs and others for liferafts and other goods and to injure
15 consumers of such liferafts and other goods through higher prices and less consumer choice.

16 2. The United States Coast Guard, Department of Homeland Security (“Coast Guard”)
17 has prescribed regulations in the Code of Federal Regulations (“CFR”) which require most vessels
18 to have inflatable liferafts. The CFR prescribes Coast Guard mandated standards, tests and
19 procedures (“Coast Guard Regulations”) for approval of liferafts and for their periodic inspection
20 and repair at Coast Guard approved “stations” run by plaintiffs and others.

21 3. The Coast Guard Regulations require each owner or operator wishing to service a
22 particular manufacturer’s brand of liferafts to meet certain application and inspection criteria, after
23 which they become an “Approved Servicing Facility.” The Coast Guard, pursuant to the Coast
24 Guard Regulations, has retained exclusive control over the certifying of any Approved Servicing
25 Facility. COMAR and Oceans West at all times relevant herein had Coast Guard Approved
26 Servicing Facilities for the liferaft brands manufactured by defendants.

27 4. The Coast Guard Regulations require each Approved Servicing Facility, like those
28 of plaintiffs COMAR and Oceans West, to employ at least one servicing technician (“Servicing

1 Technician”) who has successfully completed the manufacturer’s training course for that particular
2 brand of liferaft (“Certification Training”). The regulations require each Approved Servicing
3 Facility to affix an inspection sticker with the manufacturer’s name and other information on each
4 liferaft container or valise for each liferaft it services (“Inspection Sticker”). They require each
5 Approved Servicing Facility to issue a certificate with the manufacturer’s name and other
6 information to the liferaft owner for each liferaft it services (“Owner Certificate”).

7 5. The Coast Guard Regulations require the manufacturer of a liferaft, like defendants
8 RFD Ltd., RFD Inc. and Revere, to have a training program for the certification and recertification
9 of Servicing Technicians (“Certification Training”). These Servicing Technicians provide the
10 required periodic inspection, repairing, replacement of supplies and repacking of liferafts of that
11 manufacturer’s brand (“Servicing”). The manufacturer is required by the Coast Guard Regulations
12 to issue a certificate of competence to each technician who has successfully completed
13 Certification Training (“Competence Certificate”). The Competence Certificate must be displayed
14 at the Approved Servicing Facility.

15 6. Under the Coast Guard Regulations, only the manufacturer or the manufacturer’s
16 designated agent may provide the Certification Training, Competence Certificates, Inspection
17 Stickers and Owner Certificates.

18 7. Defendants RFD Ltd. and RFD Inc. are the manufacturers of RFD brand and
19 RFD/Revere brand liferafts. They have designated defendant Revere as their exclusive agent in
20 the United States and given Revere total control over providing Certification Training,
21 Competence Certificates, Inspection Stickers and Owner Certificates for these liferaft brands in the
22 United States, pursuant to the Coast Guard Regulations.

23 8. Defendant Revere is the manufacturer of Revere brand liferafts. Revere does not
24 actually manufacture the entire liferaft, but buys liferafts and liferaft hulls from other
25 manufacturers, including defendants RFD Ltd. and RFD Inc. as well as others, then assembles the
26 liferafts and puts the “Revere” brand on them. Revere has total control over providing
27 Certification Training, Competence Certificates, Inspection Stickers and Owner Certificates for the
28 “Revere” liferaft brand in the United States, pursuant to the Coast Guard Regulations.

1 9. Because of these requirements in the Coast Guard Regulations, defendants RFD
2 Ltd., RFD Inc. and Revere have monopoly power over the markets for Certification Training,
3 Competence Certificates, Inspection Stickers and Owner Certificates for three brands of liferafts,
4 RFD, RFD/Revere and Revere brands (the “RFD/Revere Brands”). They provide the only possible
5 competition for Certification Training for RFD/Revere Brands in the United States. They have the
6 exclusive right to issue the Competence Certificates for RFD/Revere Brands. They have the
7 exclusive right to issue Inspection Stickers and Owner Certificates for RFD/Revere Brands.
8 Together they control 100% of the markets for Certification Training, Competence Certificates,
9 Inspection Stickers and Owner Certificates for RFD/Revere Brands.

10 10. Pursuant to 46 CFR § 160.151-21 “SOLAS A” and “SOLAS B” inflatable liferafts,
11 in order to be recertified, must have certain supplies, including heaving lines, jack knives, bailers,
12 sponges, sea anchors, paddles, tin-openers, first-aid kits, whistles, flares, electric torchs, radar
13 reflectors, signaling mirrors, lifesaving signals, fishing tackle, food rations, drinking water,
14 desalting apparatuses, drinking cups, survival instructions, action instructions, thermal protective
15 aides, repair outfits, pumps or bellows and plugs for pressure relief valves (“Recertification
16 Supplies”).

17 11. Some of these Recertification Supplies are sold by defendant Revere in competition
18 with plaintiffs COMAR and Oceans West. Recertification Supplies are sold as well by other
19 competitors of Revere including Datrex, Inc. of Kinder, Louisiana (“Datrex”) and Alexander-Ryan
20 Marine & Safety Systems of Houston, Texas (“Alexander-Ryan”). Revere, through the use of its
21 monopoly power over the markets for Certification Training, Competence Certificates, Inspection
22 Stickers and Owner Certificates for RFD/Revere Brands, is able to charge supracompetitive prices
23 for these Recertification Supplies and to foreclose competitors, including COMAR, Oceans West,
24 Datrex and Alexander-Ryan, from selling these to servicers of RFD/Revere Brands of liferafts.

25 12. Pursuant to 46 CFR § 160.151-25 “SOLAS A” and “SOLAS B” inflatable liferafts,
26 in order to be recertified, must have additional equipment and parts specified by RFD Ltd., RFD
27 Inc. and Revere, as manufacturers, which equipment and parts are shown in their approved
28 drawings and covered in their servicing manual (“OEM Parts”). These OEM Parts are, or could be

1 available from RFD Ltd., RFD Inc. and Revere, as well as from other manufacturers of the OEM
2 Parts and from some third parties. However, defendant Revere, with the agreement of RFD Ltd.
3 and RFD Inc., has unlawfully conditioned its sale of Certification Training, Competence
4 Certificates, Inspection Stickers and Owner Certificates for RFD/Revere Brands on the purchase of
5 OEM Parts from Revere. Revere charges supracompetitive prices for these OEM Parts to
6 Approved Servicing Facilities, some of whom compete directly with Revere for Servicing.

7 13. Defendant Revere has also unlawfully conditioned its sale of Certification Training,
8 Competence Certificates, Inspection Stickers and Owner Certificates for RFD/Revere Brands on
9 Servicing Facilities buying quotas of new liferafts from Revere ("New Liferafts"). This
10 conditioning has occurred even though the Coast Guard has found distribution of New Liferafts
11 and Servicing of inflatable liferafts to be separate markets.

12 14. Defendant Revere has required Approved Servicing Facilities for the RFD/Revere
13 Brands to sign contracts, as a condition to being able to buy Certification Training, Competence
14 Certificates, Inspection Stickers and Owner Certificates for RFD/Revere Brands in the United
15 States, which contracts require that the servicing facilities purchase exclusively from Revere, at
16 supracompetitive prices, Recertification Supplies and OEM Parts and that they purchase unwanted
17 New Liferafts. Revere has thereby foreclosed competitors like COMAR and Oceans West, as well
18 as Datrex, Alexander-Ryan and others, from selling Recertification Supplies to such Approved
19 Servicing Stations. Revere has also foreclosed COMAR and Oceans West, as well as others, from
20 selling OEM Parts. Revere has also foreclosed the sale of a substantial volume of New Liferafts to
21 Approved Servicing Facilities.

22 15. Defendants RFD Ltd. and RFD Inc. have entered into contracts and combinations
23 with defendant Revere, which give Revere exclusive control over the sale of Certification
24 Training, Competence Certificates, Inspection Stickers and Owner Certificates for RFD/Revere
25 Brands in the United States and which prevent their providing competition with Revere for these.
26 This exclusive control has enabled defendant Revere to engage in the unlawful conditioning of the
27 sale of such Certification Training, Competence Certificates, Inspection Stickers and Owner

28 ///

1 Certificates for RFD/Revere Brands, on Approved Servicing Facilities purchasing Recertification
2 Supplies, OEM Parts and New Liferafts at supracompetitive prices.

3 16. The consequences of defendants RFD Ltd.'s, RFD Inc.'s and Revere's actions has
4 been: (a) to unreasonably foreclose competition for Recertification Supplies, OEM Parts and New
5 Liferafts; (b) to artificially raise, to supracompetitive levels, the prices for Recertification
6 Supplies, OEM Parts and New Liferafts; (c) to decrease output of for Recertification Supplies,
7 OEM Parts and New Liferafts; (d) to injure competition and consumers of Servicing for
8 RFD/Revere Brands of liferafts, for Recertification Supplies and for OEM Parts for RFD/Revere
9 Brands of liferafts in the United States.

10 17. Plaintiffs COMAR and Oceans West compete with other Approved Servicing
11 Facilities to provide Servicing for RFD/Revere Brands of liferafts. Plaintiffs compete with
12 defendant Revere for the sale of Recertification Supplies and New Liferafts. As a result of the
13 unlawful acts of defendants RFD Ltd., RFD Inc. and Revere: (a) plaintiffs have been foreclosed
14 and are being foreclosed from competing for the sale of Servicing for RFD/Revere Brands of
15 liferafts, for the sale of Recertification Supplies and for the sale of competing New Liferafts;
16 (b) plaintiffs have paid supracompetitive prices for Certification Training, Competence
17 Certificates, Inspection Stickers and Owners Certificates; and (c) plaintiffs have thereby been
18 injured in their businesses and property.

19 18. This action is brought pursuant to: (a) the Sherman Act and the Clayton Act, 15
20 U.S.C. § 1, *et seq.*; (b) the Code of Federal Regulations for the United States Coast Guard, 46 CFR
21 § 160.151-1, *et seq.*; (c) the federal declaratory judgment provisions in 28 U.S.C. §§ 2201 *et seq.*
22 and Fed. R. Civ. Proc. 57; and, (d) state statutes and common laws. It is brought against Revere,
23 RFD Ltd. and RFD Inc. in order to obtain damages, declaratory relief and injunctive relief.

24 **II. Jurisdiction, Venue and Commerce**

25 19. The jurisdiction of this court is invoked and this action is instituted under the provisions
26 of Sections 1331, 1332, 1337 and 1367 of Title 28, United States Code (28 U.S.C. §§ 1331, 1332,
27 1337 and 1367) and Sections 4, 12 and 16 of the Clayton Act (15 U.S.C. §§ 15, 22 and 26), based
28 on federal question, diversity of citizenship, regulation of commerce and supplemental jurisdiction.

1 It is brought to declare the rights of plaintiffs, to recover damages sustained by plaintiffs as a result
2 of defendants' unlawful actions and to obtain injunctive relief.

3 20. The matter in controversy exceeds the sum or value of \$75,000, exclusive of interest
4 and costs.

5 21. Venue is proper in the Northern District of California under Section 12 of the
6 Clayton Act (15 U.S. § 22) and under 28 U.S.C. § 1391 because defendants Revere, RFD Ltd. and
7 RFD Inc. transact business and are found within this District.

8 22. Revere, RFD Ltd. and RFD Inc. have done and do substantial amounts of business
9 in the Northern District of California, including sales of New Liferrafts, Recertification Supplies,
10 OEM Parts, Certification Training, Inspection Stickers and Owner Certificates. Revere, RFD Ltd.
11 and RFD Inc., as hereinafter set forth, intentionally violated Sections 1 and 2 of the Sherman Act,
12 through acts which, in part, occurred in the Northern District of California and which have directly
13 injured plaintiffs in their trade and business.

14 **III. The Parties**

15 **A. Plaintiffs**

16 23. Plaintiff Coast Marine and Industrial Supply, Inc. ("COMAR") is a corporation
17 organized and in good standing pursuant to the laws of the State of California, with its principal
18 place of business in San Francisco, California. COMAR is a San Francisco-based marine supply
19 store. It was started in 1946 by a North Beach family, the Salvarezzas, and was originally called
20 "Fisherman Supply." It is now located in San Francisco at Fisherman's Wharf with an affiliate in
21 San Diego called "Oceans West," which is also owned by descendants of the Salvarezza family,
22 Bob and Alice Salvarezza.

23 24. COMAR is a highly-respected company which sells and services numerous brands
24 of liferafts, including the RFD/Revere Brands and other brands that compete with these. COMAR
25 developed the market for commercial liferafts in the San Francisco Bay area. COMAR was the
26 first Coast Guard certified servicer in the San Francisco Bay area for many brands now under the
27 RFD Ltd. and RFD Inc. umbrella. These include B.F. Goodrich, RFD, Beaufort, Elliott,
28 Crewsaver, ISSI and Revere. In 1970 COMAR was first certified for B.F. Goodrich. In 1976

1 COMAR was first certified for RFD. In 1979 COMAR was first certified for Beaufort. In 1989
2 COMAR was first certified for Elliott. In 1995 COMAR was first certified for Crewsaver. In 1993
3 COMAR was first certified for RFD/Revere. COMAR has maintained its standing as a Coast
4 Guard Approved Servicing Facility and its Coast Guard Certification Training for these brands
5 since COMAR was first certified.

6 25. COMAR was the first dealer to represent RFD, Beaufort, ISSI and RFD/Revere
7 liferafts in the San Francisco Bay area. From 1979 through the early 1990's COMAR was the sole
8 RFD, Beaufort and Elliott liferaft sales and service facility in the San Francisco Bay area.
9 Customers to whom COMAR has sold these rafts return to COMAR for service regularly and
10 expect them to service such rafts.

11 26. Plaintiff Oceans West Marine and Industrial Supply, Inc. ("Oceans West") is a
12 corporation organized and in good standing pursuant to the laws of the State of California, with its
13 principal place of business in San Diego. Oceans West is a marine supply store started in 1986. Its
14 president is Alice Salvarezza. Oceans West sells and services numerous brands of liferafts,
15 including the RFD/Revere Brands and other brands which compete with these.

16 **B. Defendants**

17 27. Defendant Revere Supply, Inc. ("Revere") is a corporation organized pursuant to the
18 laws of the State of Florida, with its principal place of business in Jacksonville, Florida. Revere is
19 in the businesses of: (a) selling liferafts (which it buys or assembles from liferaft hulls, parts and
20 supplies that it buys from others) to dealers or direct to end users; (b) servicing liferafts for end
21 users; (c) selling Certification Training, Competence Certificates, Inspection Stickers and Owner
22 Certificates for RFD/Revere Brands (which it obtains from RFD Ltd., or RFD Inc. employees) to
23 Approved Servicing Facilities; (d) selling Recertification Supplies to Approved Servicing
24 Facilities; and (e) selling OEM Parts for RFD/Revere Brands to Approved Servicing Facilities. In
25 1992, defendant RFD Ltd. and Revere entered into a joint marketing agreement for the production
26 and distribution of RFD/Revere Brands. As a part of this agreement Revere obtained the exclusive
27 rights to sell Certification Training, Inspection Stickers, Owner Certificates and OEM Parts for
28 RFD/Revere Brands.

1 28. Defendant RFD Beaufort, Ltd. (“RFD Ltd.”) is a limited liability company which is,
2 on information and belief, organized under the English Companies Act, with its principal place of
3 business in Belfast, Northern Ireland. RFD Ltd. is a conglomerate of many formerly independent
4 liferaft manufacturing companies, including B.F.Goodrich, RFD, Beaufort, Elliott, Crewsaver and
5 ISSI. n information and belief, RFD Ltd. was acquired in 2004 by and is now part of a larger
6 conglomerate group, the Survitec Group, based in Dunmurry, Northern Ireland.

7 29. RFD Ltd. is in the business of manufacturing and selling life safety systems,
8 primarily for marine use. These include liferafts and parts for the servicing of such liferafts. RFD
9 Ltd is also in the business of selling training, retraining, inspection stickers and certificates for the
10 servicing and certification of liferafts, including certification under the Coast Guard Regulations.
11 RFD Ltd is also in the business of selling OEM Parts for the servicing of liferafts. RFD Ltd. sells
12 its liferafts in the United States through exclusive agents, defendants Revere and RFD Inc. RFD
13 Ltd. also sells its training, retraining, inspection stickers and certificates in the United States
14 through these exclusive agents, Revere and RFD Inc. Revere has the exclusive agency in the
15 United States from RFD Ltd. for the sale of Certification Training, Competence Certificates,
16 Inspection Stickers and Owner Certificates for RFD/Revere Brands.

17 30. Defendant RFD Beaufort, Inc. (“RFD Inc.”) is a corporation organized pursuant to
18 the laws of the State of Ohio, with its principal place of business in Sharon Center, Ohio. RFD
19 Inc., on information and belief, is a wholly owned subsidiary of RFD Ltd. RFD Inc. is in the
20 business of manufacturing and selling life safety systems in the United States, including liferafts
21 and parts for servicing such liferafts. RFD Inc. has the exclusive agency in the United States for
22 certain RFD Ltd. liferafts and the parts, training, retraining, inspection stickers and certificates for
23 these liferafts. These include the B.F.Goodrich, Beaufort, ISSI, Elliott and Crewsaver. RFD Inc.,
24 unlike Revere, does not condition the sales of training, retraining, inspection stickers and
25 certificates for the brands of liferafts it controls in the United States on the purchase of
26 Recertification Supplies, OEM Parts and New Liferafts. However, for the RFD/Revere Brands,
27 RFD Inc., at the insistence of RFD Ltd., allocates to Revere exclusivity for sales of Certification

28 ///

1 Training, Competence Certificates, Inspection Stickers, Owner Certificates and OEM Parts for
2 RFD/Revere Brands to Revere.

3 **IV. Definitions**

4 31. “Approved Servicing Facility” means a Coast Guard approved facility or station
5 which has met the requirements and followed the procedures of 46 CFR §§ 160.151-41, 160.151-
6 43 and 160.151-45 to obtain approval for servicing inflatable liferafts for a particular
7 manufacturer’s brand.

8 32. “Certification Training” means the training or refresher training by a manufacturer
9 or its agent given to “Servicing Technicians” for Servicing inflatable liferafts, as provided under
10 46 CFR §§ 160.151-35(b)(4) and 160-151-39.

11 33. “Coast Guard Regulations” means the regulations pertaining to inflatable liferafts
12 set out in Title 46 of the Code of Federal Regulations for the United States Coast Guard,
13 Department of Homeland Security.

14 34. “Competence Certificate” means the certificate required to be issued by a
15 manufacturer of inflatable liferafts to each Servicing Technician who successfully completes
16 Certification Training for a particular manufacturer’s brand of liferaft pursuant to 46 CFR §§
17 160.151-39(a)(3) and 160.151-39(b)(5). This Competence Certificate must be displayed at the
18 Approved Servicing Facility.

19 35. “Inspection Sticker” means the sticker which must be affixed to the liferaft
20 container or valise after each Servicing pursuant to 46 CFR § 160.151-57(m)(3).

21 36. “New Liferafts” means liferafts which are purchased from the manufacturer or its
22 agent for resale to vessels, either to fit or refit such vessels or to replace condemned liferafts.
23 Condemned liferafts are usually replaced on a like-for-like basis, with the same brand of New
24 Liferafts.

25 37. “OEM Parts” means parts for inflatable liferafts that are made to the original
26 equipment manufacturer’s specifications and are acceptable replacement parts for that
27 manufacturer’s brand of liferaft under the Coast Guard Regulations. They include additional
28 equipment and parts specified by manufacturers pursuant to 46 CFR § 160.151-25, which

1 equipment and parts are shown in the manufacturer's approved drawings and covered in their
2 servicing manual.

3 38. "Owner Certificate" means the certificate which must be issued to the liferaft owner
4 or the owner's agent for each liferaft serviced by an Approved Servicing Facility pursuant to 46
5 CFR § 160.151-57(p).

6 39. "RFD/Revere Brands" means the liferaft brands manufactured by RFD and Revere
7 and labeled with the brands "RFD," "RFD/Revere" and/or "Revere" for which Revere, by
8 agreement with RFD Ltd. and RFD Inc., has exclusive control over Certification Training,
9 Competence Certificates, Inspection Stickers and Owner Certificates.

10 40. "Recertification Supplies" means those items which must be inspected and replaced,
11 if required, in SOLAS A and SOLAS B inflatable liferafts pursuant to 46 CFR § 160.151-21 during
12 their Servicing. Such items include heaving lines, jack knives, bailers, sponges, sea anchors,
13 paddles, tin-openers, first-aid kits, whistles, flares, electric torches, radar reflectors, signaling
14 mirrors, lifesaving signals, fishing tackle, food rations, drinking water, desalting apparatus,
15 drinking cups, survival instructions, action instructions, thermal protective aides, repair outfits,
16 pumps or bellows and plugs for pressure relief valves.

17 41. "Servicing" or "Serviced" means the process or the result of the required periodic
18 inspection, repairing, replacement of supplies and repacking of inflatable liferafts as provided for
19 in 46 CFR §§ 160.151-35 and 160.151-57.

20 42. "Servicing Technician" means the person who has received training or refresher
21 training by a manufacturer or its agent for Servicing that manufacturer's brand of inflatable
22 liferafts, as provided for under 46 CFR § 160-151-39.

23 **V. The Relevant Markets**

24 **A. Product Markets**

25 43. The general relevant product markets in this action are: (a) the market for the sale of
26 New Liferafts; (b) the markets for the Servicing of each individual brand of liferaft; (c) the
27 markets for the sale of OEM Parts for each brand of liferaft; (d) the markets for the sale of
28 Certification Training, Inspection Stickers and Owners Certificates for the Servicing for each brand

1 of liferaft; and (f) the market for the sale of Recertification Supplies for Servicing of all brands of
2 liferafts.

3 44. (a) The market for the sale of liferafts to dealers like COMAR and Oceans West has
4 many manufacturers competing for such sales, including Switlik, RFD Beaufort, DBC, Zodiac,
5 Viking, Switlik, Avon and Fujikura. Except for the illegal purchase quotas sought to be imposed
6 on Approved Servicing Facilities by manufacturers and their agents like Revere, this is a highly
7 competitive market. (b) The market for the Servicing of each individual brand of liferaft consists
8 of businesses with Approved Servicing Facilities and Servicing Technicians which are qualified to
9 do the Service. Except where manufacturers and their agents like Revere refuse to certify
10 competing Approved Servicing Facilities or where they terminate previously certified competing
11 facilities, in order to effect a monopoly in service for RFD/Revere Brands of liferaft in a particular
12 geographic market, this is a competitive market in most geographic areas. (c) The market for OEM
13 Parts for each brand of liferaft has several competitors, consisting of the suppliers of such parts to
14 the manufacturers, the manufacturers and the manufacturers' agents, like Revere. Except where
15 manufacturers' and their agents, like RFD, Ltd., RFD, Inc. and Revere, force Approved Servicing
16 Facilities to buy OEM Parts for RFD/Revere Brands of liferafts through them, this market is
17 competitive. (d) The market for the sale of Certification Training, Inspection Certificates and
18 Owner Certificates for the Servicing of each brand of liferaft is, because of the Coast Guard
19 Regulations, a government granted monopoly to manufacturers and their agents, like Revere. (e)
20 The market for the sale of generic Recertification Supplies for the servicing of all brands of
21 liferafts has many competitors. Except where manufacturers or their agents, like Revere, force
22 Approved Servicing Facilities to buy such generic Recertification Supplies, the market is
23 competitive.

24 **B. Geographic Markets**

25 45. The relevant geographic markets for each of these product markets is as follows.

26 (a) For the sale of New Liferafts to dealers and end users, the geographic market is world wide. (b)
27 For the sale of Servicing for each individual brand of liferaft, the geographic market is local,
28 consisting of Approved Servicing Facilities in close proximity to the port facility where the vessel

1 carrying the liferaft to be serviced is located. (c) For the sale of OEM Parts for each brand of
2 liferaft, the geographic market is worldwide. (d) For the sale of Certification Training, Inspection
3 Stickers and Owner Certificates for the Servicing of each brand of liferaft, the geographic market is
4 the United States, as dictated by the Coast Guard Regulations. (e) For the sale of generic
5 Recertification Supplies for the servicing of all brands of liferafts, the geographic market is
6 worldwide.

7 **VI. General Allegations Applicable to All Claims for Relief**

8 **A. Background**

9 46. Pursuant to Title 46 (Shipping), Part 117 (Lifesaving Equipment and Arrangements)
10 of the Code of Federal Regulation (“CFR”), the United States Coast Guard, Department of
11 Homeland Security (“Coast Guard”) requires certain vessels under its jurisdiction to have survival
12 equipment, including inflatable liferafts. Title 46 (“Shipping”), Part 160 (“Lifesaving
13 Equipment”), Subpart 151 (“Inflatable Liferafts (SOLAS)”) prescribes standards, tests and
14 procedures for approval by the Coast Guard of inflatable liferafts that meet certain requirements set
15 out by the International Convention for the Safety of Life at Sea (“SOLAS”). It also provides for
16 their periodic inspection and repair (“Servicing”) at Coast Guard approved facilities (“Approved
17 Servicing Facility”). Vessels on international voyages subject to SOLAS and most other vessels
18 that operate offshore are required by the Coast Guard Regulations to have inflatable liferafts.

19 47. These inflatable liferafts are made of a pliable, airtight fabric and are packed tightly
20 in impact proof containers. The liferafts contain, packed inside them, certain generic supplies for
21 survival that need to be replaced periodically. These include bailers, sponges, sea anchors,
22 paddles, first-aid kits, flares, flashlights, fishing tackle, food rations, drinking water, desalting
23 apparatus, thermal protective aides, repair outfits and pumps (“Recertification Supplies”). Liferafts
24 are inflated when they are deployed by CO₂ cartridges which are packed with them. The liferafts
25 vary in size from small (2 person) to very large (100 person or larger) capacity.

26 48. 46 CFR § 160.151-35 requires the manufacturer of a liferaft, like defendants RFD
27 Ltd., RFD Inc. and Revere to have a training program for the certification of servicing technicians
28 for the required periodic inspection, repairing and repacking of liferafts of that manufacturer’s

1 brand. 46 CFR § 160.151-39 requires the manufacturer to maintain refresher training for
 2 recertification of previously trained servicing technicians for that manufacturer's brand
 3 ("Certification Training"). 46 CFR § § 160.151-39(a)(3) and 160.151(b)(5) require the
 4 manufacturer to issue a "Certificate of Competence" to each Servicing Technician who has
 5 successfully completed Certification Training. The Certificate of Competence must be displayed at
 6 the Approved Servicing Facility.

7 49. 46 CFR § 160.151-42(e) requires each Approved Servicing Facility, like plaintiffs
 8 COMAR and Oceans West, to employ at least one Servicing Technician who has successfully
 9 completed the manufacturer's Certification Training. 46 CFR § 160.151-57(m) requires each
 10 Approved Servicing Facility to affix an Inspection Sticker with the manufacturer's name and other
 11 information on each liferaft container or valise for each liferaft for which it provides Servicing. 46
 12 CFR § 160.151-57(p) requires each Approved Servicing Facility to issue a certificate with the
 13 manufacturer's name and other information to the liferaft owner for each liferaft it services
 14 ("Owner Certificate").

15 50. The United States Coast Guard Regulations require annual servicing of the liferafts
 16 by an Approved Servicing Facility for that brand of liferaft. The requirements for approval of
 17 Approved Servicing Facilities and for the Servicing of liferafts are set out at 46 CFR §§ 160.151-
 18 41 through 160.151-57. Pursuant to 46 CFR § 160.151-57 at every fifth annual servicing
 19 inspection each liferaft must be inflated by its own gas-inflation system, extensively tested and
 20 repaired or condemned.

21 **B. Certification Schools Monopoly**

22 51. Because of these requirements of the Code of Federal Regulations, defendants RFD
 23 Ltd., RFD Inc. and Revere, as manufacturers or their exclusive agents in the United States, have
 24 monopoly power over the markets for the Certification Training of Servicing Technicians for
 25 RFD/Revere Brands of liferaft. They alone provide or are capable of providing schools for
 26 Certification Training. They, therefore, have the exclusive rights to issue the Certificate of
 27 Competence.

28 52. Because of the requirements of the Code of Federal Regulations, defendants RFD

1 Ltd., RFD Inc. and Revere have monopoly power over the market for providing required Inspection
2 Stickers and Owner Certificates for each RFD/Revere Brand liferaft Serviced. They are the only
3 source in the United States for the Inspection Stickers and Owner Certificates for the Servicing of
4 RFD/Revere Brands of liferafts.

5 **C. Competitive Alternatives**

6 53. Pursuant to 46 CFR § 160.151-21 SOLAS A and SOLAS B inflatable liferafts, in
7 order to be Serviced, must have certain survival supplies (“Recertification Supplies”).
8 Recertification Supplies include many “dated items” like flares, water, food and medicines. These
9 dated items need to be replaced at each annual Servicing of a liferaft under the Coast Guard
10 Regulations. These are for RFD/Revere Brands of liferafts for other brands as well.

11 54. COMAR and Oceans West have offered and now offer some of these
12 Recertification Supplies for sale to other Approved Servicing Facilities. For example, COMAR
13 and Oceans West are authorized distributors on the West Coast for Pains Wessix flares – a well-
14 respected brand of flares which are widely used in inflatable liferafts, including in RFD/Revere
15 Brands of liferafts and other brands as well.

16 55. Revere also offers Recertification Supplies for the servicing of RFD/Revere Brands
17 of liferafts and for other brands. Revere is in competition with COMAR and Oceans West, as well
18 as others, to supply Recertification Supplies to other Approved Servicing Facilities for
19 RFD/Revere Brands of liferafts and for other brands. Revere is also an authorized distributor for
20 Pains Wessix flares and competes with COMAR and Oceans West to sell these Recertification
21 Supplies to Approved Servicing Facilities.

22 56. Consumers of Servicing for particular brands of inflatable liferafts are recognized
23 according to the brand of liferaft they own. For example, an owner of one of the RFD/Revere
24 Brands of liferafts which is in need of Servicing requires an Approved Servicing Facility for that
25 RFD/Revere Brand of liferaft and a Service Technician having Certification Training, a
26 Competence Certificate, an Inspection Sticker and an Owner Certificate for that RFD/Revere
27 Brand of liferaft. An Approved Servicing Facility, a Service Technician having Certification
28 Training, a Competence Certificate, an Inspection Sticker and an Owner Certificate for a different

1 brand of liferaft, like Viking brand liferafts, are not a satisfactory substitute. There is no
2 reasonable interchangeability of use between the different brands of liferafts for Approved
3 Servicing Facilities, Certification Training, Competence Certificates, Servicing Technicians,
4 Servicing, Inspection Stickers and Owner Certificates.

5 57. There is no cross-elasticity of demand between the different brands of liferafts for
6 Approved Servicing Facilities, Certification Training, Competence Certificates, Servicing
7 Technicians, Servicing, Inspection Stickers and Owner Certificates. Significant increases in price
8 for any of these will not create substantial changes in the demand for them or switching between
9 liferaft brands.

10 58. Members of the liferaft servicing industry understand and agree that the brand of
11 liferaft differentiates various consumers for Servicing of that liferaft. There are separate markets
12 for Servicing for each of the major brands of inflatable liferafts. Different marketing strategies are
13 employed in attempting to sell Servicing to owners of different brands of liferafts. Distinct prices
14 for Servicing are employed, based on the brand of liferaft. Different sensitivities to price changes
15 exist as to Servicing for different brands of liferafts.

16 59. Certain factors may contribute to owners of certain brands of liferafts being locked-
17 in to purchasing Servicing for that liferaft rather than switching to another brand of liferaft. These
18 factors include: (a) high capital investment in the liferaft, where used liferaft sales or buy-out
19 markets are not functioning efficiently; (b) the general policy in the liferaft industry to exchange
20 like-brand for like-brand, when a liferaft must be condemned and replaced; (c) the difficulty of
21 obtaining single-source Servicing for multiple liferaft brands on the same vessel; (d) the existence
22 of significant information costs for purchasers and owners of liferafts; (e) the difficulty or
23 impossibility of life-cycle costing liferafts; (f) the unavailability of separate life-time warranties or
24 contracts for Servicing; (g) price discrimination between customers for Servicing and OEM Parts;
25 (h) the switching by a manufacturer or dealer of their policies for Servicing and OEM Parts toward
26 customers after the liferafts are purchased; and (i) other practical factors in the marketplace.

27 ///

VII. The Unlawful and Anticompetitive Actions of Revere, RFD Ltd. and RFD Inc.

A. Revere's Forcing of New Liferaft and OEM Parts Purchases

60. In March 2002 Revere refused to sell Inspection Stickers and Owner Certificates to Oceans West for Servicing RFD/Revere Brands of liferafts unless Oceans West agreed to purchase from Revere eight (8) new liferafts, as well as all its requirements for OEM Parts. This refusal was made by Revere despite the fact that Oceans West was an Approved Servicing Facility and had a Servicing Technician with Certification Training for RFD/Revere Brands of liferafts.

61. When Oceans West acceded to this demand, based solely on its immediate need to certify rafts it had already Serviced, Revere increased its demand and tried to require Oceans West and COMAR to purchase from Revere at least eight (8) liferafts per year for three (3) years, as well as to purchase all OEM Parts for RFD/Revere Brands of liferafts exclusively from Revere.

62. By letter of March 12, 2002, legal counsel for Oceans West advised Revere that these demands "represent a *per se* violation of the Cartwright Act of California and an Unfair Trade Practice under California law." Revere did not deny that it had engaged in such actions nor did it deny that they were unlawful. Revere dropped its demands, admitting their unlawfulness.

B. Refusal of Certification Training for RFD/Revere Brands

63. On June 17, 2004, Andy Kaufman ("Kaufman"), an officer of defendant Revere, called Thomas Tarantino ("Tarantino") of COMAR. Kaufman advised Tarantino that Revere, the sole source of Certification Training for RFD/Revere Brands of liferafts in the United States, was not going to allow Tarantino or anyone from COMAR to attend the school for Certification Training for RFD/Revere Brands of liferafts. Kaufman also advised COMAR that Revere would not provide COMAR with Inspection Stickers or Owner Certificates for RFD/Revere Brands of liferafts any more. Tarantino is a highly qualified and respected liferaft Servicing Technician, with over twenty years experience. Tarantino is certified to service B.F. Goodrich, RFD, Beaufort, Elliott, Crewsaver, ISSI, DBC, Zodiac, Switlik and Viking brand liferafts, among others.

64. The reasons for Revere's refusal to allow Tarantino to attend Certification Training and refusal to sell COMAR Inspection Stickers and Owners' Certificates for RFD/Revere Brands of liferafts were: (a) COMAR's refusal to accede to Revere's demands to buy Recertification

1 Supplies and OEM Parts from Revere; (b) COMAR's competition with Revere in Recertification
2 Supplies; and (c) the desire to give all Servicing for RFD/Revere Brands of liferafts to Sal's
3 Inflatables, in Alameda, California, which had acceded to Revere's demands.

4 65. On June 30, 2004, legal counsel for COMAR advised Revere by letter, with copies
5 to RFD Ltd. and RFD Inc., that its refusal: "constitutes unlawful monopoly leveraging –
6 monopolization of the service market – under Section 2 of the Sherman Act, 15 U.S.C. § 2," and
7 "constitutes unlawful 'tying' arrangements under Section 1 of the Sherman Act, 15 U.S.C. § 1"
8 under the precedent in *Eastman Kodak Company v. Image Technical Services, Inc.* 504 U.S. 451
9 (1992) and *Image Technical Services, et al. v. Eastman Kodak Co.* 125 F. 3d 1195 (9th Cir. 1997),
10 *certiorari denied* 523 U.S. 1094 (1998). Revere did not deny that it had engaged in such refusals
11 nor did it deny that such refusal was unlawful. Revere did drop its refusals, admitting the
12 unlawfulness of such refusals.

13 **C. Creation of Monopolies for Servicing**

14 66. As of July 2004, Revere had provided Certification Training to Sal's Inflatables in
15 Alameda, California, for RFD/Revere Brands of liferafts and was providing Sal's Inflatables with
16 Inspection Stickers and Owners Certificates for RFD/Revere Brands liferafts. Sal's Inflatables had
17 acquiesced in Revere's demands for the purchase of Recertification Supplies, OEM Parts and
18 quotas of New Liferafts from Revere, which COMAR and Oceans West had refused to do.

19 67. Refusal by Revere to provide COMAR with Certification Training, Inspection
20 Stickers and Owner Certificates for RFD/Revere Brands of liferafts would have given Sal's
21 Inflatables a monopoly in the San Francisco Bay area for Servicing RFD/Revere Brands of
22 liferafts. Under similar circumstances, when Sal's Inflatables obtained, for a short time, a
23 monopoly for Servicing another manufacturer's brand of liferafts, Sal's charged the Golden Gate
24 Ferries nearly double what COMAR had charged for Servicing the Golden Gate Ferries' liferafts.

25 68. Revere has refused to provide other Approved Servicing Facilities with
26 Certification Training, Inspection Stickers and Owner Certificates for RFD/Revere Brands of
27 liferafts in order to effect such monopolies in Servicing for RFD/Revere Brands of liferafts in the
28 past. USA Services, Inc. and Paxton Company from Norfolk, Virginia, were refused Certification

1 Training, Inspection Stickers and Owner Certificates for RFD/Revere Brands of liferafts, in order
2 to effect a monopoly for Vane Brothers in the Chesapeake Bay Area. This was after Vane Brothers
3 agreed to Revere's illegal demands. Sea Safe Services, Inc, of Tampa, Florida and Datrex of
4 Miami, Florida were refused Certification Training, Inspection Stickers and Owner Certificates for
5 RFD/Revere Brands of liferafts, in order to try to effect a monopoly for Revere itself in Florida,
6 because Revere provided Servicing in Jacksonville, Florida. Sea Safety International from
7 Seacaucus, New Jersey was also refused Certification Training, Inspection Stickers and Owner
8 Certificates for RFD/Revere Brands of liferafts, in order to effect a monopoly for Vane Brothers in
9 the New York/New Jersey area, after Vane Brothers had agreed to Revere's illegal demands.

10 69. Legal counsel for Datrex and Sea Safety International advised Revere, by letters
11 dated June 30, 2004 and July 7, 2004, of the illegality of Revere's refusal to provide Certification
12 Training to them for RFD/Revere Brands liferafts. Revere did not deny that it had engaged in such
13 refusals nor did it deny that they were unlawful. Revere did drop its refusals as to Datrex and Sea
14 Safety International, admitting the unlawfulness of Revere's refusals.

15 **D. Monopoly Leveraging and Tying of Supplies**

16 70. From July 19, 2004 through July 22, 2004 Tarantino attended the Certification
17 Training for RFD/Revere Brands liferafts in Jacksonville, Florida and successfully completed the
18 training. From July 19, 2004 through July 22, 2004 a Servicing Technician for Datrex attended the
19 Certification Training for RFD/Revere Brands liferafts in Jacksonville, Florida and successfully
20 completed the training. From July 19, 2004 through July 22, 2004 a Servicing Technician for
21 Marine Safety in Seattle, Washington, attended the Certification Training for RFD/Revere Brands
22 liferafts in Jacksonville, Florida and successfully completed the training. Both Tarantino and the
23 Servicing Technician for Datrex were refused Certification Training for Revere brand liferafts.
24 Revere has refused and failed to provide Competence Certificates to Tarantino and to the Servicing
25 Technicians from Datrex and Marine Safety even though it is required to do so under the Coast
26 Guard Regulations. 46 CFR § 160.15 1-39.

27 ///

28 71. Revere had presented to COMAR, Datrex and Marine Safety, in July 2004, a new

1 “Distributorship Agreement” and “Agreement for the Operation of a Revere and RFD Service
 2 Station” (“Service Station Agreement”). These agreements required, *inter alia*, that approved
 3 Servicing Facilities for RFD/Revere Brands of liferafts purchase Recertification Supplies, OEM
 4 Parts and a quota of New Liferafts exclusively from Revere. Revere initially demanded that the
 5 Distribution Agreement and Service Station Agreements be signed by COMAR, Datrex and
 6 Marine Safety before their technicians could attend the Certification Training beginning on July 19,
 7 2004, in Jacksonville, Florida.

8 72. Many other Approved Servicing Facilities signed Revere’s Distribution Agreement
 9 and Service Station Agreement, including Avalon Rafts, Sales & Service, Inc. in Wilmington,
 10 California, Sea Safety International, Inc. in Seacaucus, New Jersey, Sal’s Inflatables in Alameda,
 11 California and Puget Sound Inflatables, Inc., in Seattle, Washington. These other Approved
 12 Servicing Facilities were actual or potential customers of COMAR and Oceans West for
 13 Recertification Supplies, which Revere’s agreements required them to buy exclusively from
 14 Revere.

15 73. As a result of COMAR’s, Datrex’s and Marine Safety’s refusing to sign the
 16 Distribution Agreement, Revere refused to provide Tarantino, the Datrex Servicing Technician and
 17 the Marine Safety Servicing Technicians with their Competence Certificate, even though Revere is
 18 absolutely required to provide such Competence Certificate by the Coast Guard Regulations, 46
 19 CFR §160.151-39.

20 21 **VIII. Claims for Relief**

22 **A. First Claim for Relief** 23 **(Against Revere, RFD Ltd. and RFD Inc.)** 24 **Contracts, Combinations and Conspiracies in Restraint of Trade** **(Section 1 of the Sherman Act, 15 U.S.C. § 1)**

25 74. Plaintiffs incorporate herein by reference the allegations of paragraphs 1 through 73
 26 inclusive, above, to the extent they are consistent with the facts alleged in this cause of action,
 27 with the same force and effect as if said paragraphs were herein set forth in full.

28 75. Revere, RFD Ltd. and RFD Inc. have unreasonably restrained competition by and

1 through their aforesaid contracts, combinations and conspiracies in the markets for: (a) Servicing
2 RFD/Revere Brands of liferafts; (b) for Recertification Supplies; (c) for OEM Parts for
3 RFD/Revere Brands of liferafts; and (d) for New Liferafts. These contracts, combinations and
4 conspiracies have damaged competition in these markets and harmed consumers by unreasonably
5 foreclosing plaintiffs and other competitors from these markets and by preventing or restricting
6 competition in these markets. They have thus violated Section 1 of the Sherman Act.

7 76. Revere's, RFD Ltd.'s and RFD Inc.'s contracts and actions related thereto, which
8 unreasonably restrain competition in these markets include, but are not limited to: (a) the contracts,
9 combinations and conspiracies under which RFD Ltd. and RFD Inc. have agreed to allow Revere
10 to have exclusive control in the United States over Certification Training, Competence Certificates,
11 Inspection Stickers, Owner Certificates and OEM Parts for RFD/Revere Brands of liferafts; (b) the
12 contracts, combinations and conspiracies, including the Distribution Agreements and Service
13 Station Agreements under which Revere forces Approved Servicing Facilities to purchase
14 Recertification Supplies, OEM Parts and quotas of New Liferafts as a condition to Servicing
15 RFD/Revere Brands of liferafts; and (c) the contracts, combinations and conspiracies among
16 Revere, RFD Ltd. and RFD Inc. and others under which Revere, RFD Ltd. and RFD Inc. terminate
17 or refuse to allow Certification Training for RFD/Revere Brands of liferafts to Approved Servicing
18 Facilities, in order to create a Servicing monopoly in certain geographic areas.

19 77. The contracts, combinations and conspiracies of Revere, RFD Ltd. and RFD Inc. set
20 out in paragraph 76, subparagraphs (a) and (b), above, unreasonably restrain trade and restrict the
21 access of plaintiffs and others to the markets for Recertification Supplies, OEM Parts for
22 RFD/Revere Brands of liferafts and New Liferafts, thereby restraining competition in these
23 markets. The contracts combinations and conspiracies of Revere, RFD Ltd. and RFD Inc and
24 others set out in paragraph 76, subparagraph (c), above, unreasonably restrains trade and restricts
25 access to the markets for Servicing RFD/Revere Brands of liferafts, thereby restraining competition
26 in these markets.

27 ///

28 78. The contracts, combinations and conspiracies set out in paragraph 76, above, by

1 unreasonably restraining trade and restricting the access of plaintiffs and others to the said markets
2 restrain competition in these markets, are not justified by plausible arguments that these actions
3 were intended to increase output, enhance the efficiency of, lower prices of or make more
4 competitive other markets. These actions in fact injure competition and consumers, decrease
5 output, raise prices and decrease the economic efficiency in said markets. The likelihood of
6 anticompetitive effects from such actions is clear and the possibility of pro-competitive effects is
7 remote.

8 79. Any legitimate objectives of Revere, RFD, Ltd. and RFD, Inc. could have been and
9 could be achieved in a substantially less restrictive manner than the contracts, combinations and
10 conspiracies set out in paragraph 76.

11 80. The purpose and effect of these actions of defendants were to restrain trade and
12 competition in the said markets.

13 81. These actions of defendants constitute unreasonable restraints of trade and
14 commerce and therefore violate Section 1 of the Sherman Act, 15 U.S.C. § 1.

15 82. By reason of defendants' unlawful actions and as a direct and proximate result of
16 such actions plaintiffs have been injured in their businesses and properties through monies paid to
17 defendants and through additional costs incurred, lost sales, lost profits and loss in the value of
18 their businesses. Plaintiffs have, and will continue to suffer irreparable harm and the public will be
19 damaged through defendants' aforesaid unlawful actions in violation of Section 1 of the Sherman
20 Act. Plaintiffs have no adequate remedy at law for this irreparable harm.

21 83. The aforesaid violations of Section 1 of the Sherman Act by defendants have had,
22 will have and will continue to have the following effects, among others: (a) defendants have
23 restrained, suppressed and eliminated actual and potential competition in the market for
24 Recertification Supplies; (b) defendants have restrained, suppressed and eliminated actual and
25 potential competition in the market for OEM Parts for RFD/Revere Brands of liferafts; (c)
26 defendants have restrained, suppressed and eliminated actual and potential competition in the
27 market for Servicing RFD/Revere Brands of liferafts; (d) defendants have restrained, suppressed
28 and eliminated actual and potential competition for New Liferafts; (e) the public has been denied

the benefits of unrestricted competition in a free and open markets in these products; (f) the prices paid by the public for Recertification Supplies, OEM Parts for RFD/Revere Brands of liferafts, New Liferafts and Servicing RFD/Revere Brands of liferafts have been higher; (g) the quality of Recertification Supplies, OEM Parts for RFD/Revere Brands of liferafts, New Liferafts and Servicing of RFD/Revere Brands of liferafts has been lower; (h) the output of Recertification Supplies, OEM Parts for RFD/Revere Brands of liferafts, New Liferafts and Servicing of RFD/Revere Brands of liferafts has been decreased; (i) plaintiffs and other competitors of Revere, RFD Ltd. and RFD Inc. have been denied the benefits of unrestricted competition in free and open markets for Recertification Supplies, OEM Parts for RFD/Revere Brands of liferafts, New Liferafts and Servicing of RFD/Revere Brands of liferafts; and (j) plaintiffs and other competitors of Revere, RFD Ltd. and RFD Inc. have been precluded from obtaining and performing substantial contracts Recertification Supplies, OEM Parts for RFD/Revere Brands of liferafts, New Liferafts and Servicing for RFD/Revere Brands of liferafts.

Wherefore, plaintiffs pray judgment against defendants as set forth below.

B. Second Claim for Relief
(Against Revere, RFD Ltd. and RFD Inc.)
Exclusive Dealing Arrangements
(Section 1 of the Sherman Act, 15 U.S.C. § 1)

84. Plaintiffs incorporate herein by reference the allegations of paragraphs 1 through 83 inclusive, above, to the extent they are consistent with the facts alleged in this cause of action, with the same force and effect as if said paragraphs were herein set forth in full.

85. Plaintiffs are actual horizontal competitors of Revere for the sale of Recertification Supplies.

86. Revere, RFD Ltd. and RFD Inc. possess market power over and exclusive access to Approved Servicing Facilities through their control over Certification Training, Competence Certificates, Inspection Stickers and Owner Certificates for RFD/Revere Brands of liferafts. The ability of plaintiffs and other competitors to receive equal access to Certification Training, Competence Certificates, Inspection Stickers and Owner Certificates for RFD/Revere Brands of

1 liferafts is necessary and essential to preserve competition in Servicing RFD/Revere Brands of
2 liferafts.

3 87. Revere, RFD Ltd. and RFD Inc. have entered into long-term contracts with one
4 another under which Revere has been given the exclusive long-term control over Certification
5 Training, Competence Certificates, Inspection Stickers and Owner Certificates for RFD/Revere
6 Brands of liferafts and over OEM parts for RFD/Revere Brands of liferafts. Said defendants have
7 engaged in actions pursuant to those contracts to disadvantage or eliminate plaintiffs and others as
8 competitors for Servicing RFD/Revere Brands of liferafts, providing Recertification Supplies and
9 providing OEM Parts for RFD/Revere Brands of liferafts.

10 88. Revere's, RFD Ltd.'s and RFD Inc.'s denying plaintiffs the ability to offer
11 competitive quotes for Servicing RFD/Revere Brands of liferafts, Recertification Supplies and
12 OEM Parts for RFD/Revere Brands of liferafts, as herein alleged, is not justified by plausible
13 arguments that this was intended to increase output, enhance the efficiency of, lower prices of or
14 make more competitive any of the relevant markets defined herein. The likelihood of
15 anticompetitive effects from such denials is clear and the possibility of procompetitive effects is
16 remote. Any legitimate objectives of Revere, RFD Ltd. and RFD Inc. could have been achieved in
17 a substantially less restrictive manner.

18 89. By reason of Revere's, RFD Ltd.'s and RFD Inc.'s aforesaid unlawful contracts and
19 as a direct and proximate result of such contracts, plaintiffs have lost or will lose Servicing for
20 RFD/Revere Brands of liferafts and have lost sales of Recertification Supplies and OEM Parts for
21 RFD/Revere Brands of liferafts. They have lost sales, profits and the value of their businesses.
22 Plaintiffs have and will continue to suffer irreparable harm through the loss of their trade and
23 business, and the public will be damaged by: (a) the weakening or elimination of plaintiffs and
24 others in the market to supply said Servicing for RFD/Revere Brands of liferafts and
25 Recertification Supplies; and (b) the weakening or elimination of plaintiffs and others in the
26 market to supply said OEM Parts for RFD/Revere Brands of liferafts and New Liferafts.

27 ///

28 90. The aforesaid violations of Section 1 of the Sherman Act have had, and will

1 continue, to have the following effects in the relevant markets, among others: (a) they have
 2 achieved and maintained unreasonable control over competition for providing Servicing for
 3 RFD/Revere Brands of liferafts, Recertification Supplies and OEM Parts for RFD/Revere Brands
 4 of liferafts; (b) Revere, RFD Ltd. and RFD Inc. have restrained, suppressed and eliminated actual
 5 and potential competition and foreclosed plaintiffs and other competitors from providing said
 6 Servicing; (c) Revere, RFD Ltd. and RFD Inc. have restrained, suppressed and eliminated actual
 7 and potential competition in said Servicing, Recertification Supplies, OEM Parts and New
 8 Liferafts; (d) the public has been denied the benefits of unrestricted competition in a free and open
 9 market for the sale of said Servicing, Recertification Supplies, OEM Parts and New Liferafts; and
 10 (e) plaintiffs have been precluded from obtaining and performing substantial contracts for
 11 providing said Servicing, Recertification Supplies, OEM Parts and New Liferafts to these
 12 customers.

13 91. The actions of Revere, RFD Ltd. and RFD Inc. and their agreements among
 14 themselves and with Approved Servicing Facilities are unlawful as unreasonable exclusive dealing
 15 arrangements under Section 1 of the Sherman Act (15 U.S.C. § 1) because they unreasonably
 16 restrain competition in the said relevant markets and affect a substantial part of such markets.

17 **Wherefore**, plaintiffs pray judgment against defendants as set forth below.

18
 19 **C. Third Claim for Relief**
 20 **(Against Revere)**
 21 **Per Se Tying Arrangements**
(Section 1 of the Sherman Act, 15 U.S.C. § 1)

22 92. Plaintiffs incorporate herein by reference the allegations of paragraphs 1 through 91
 23 inclusive, above, to the extent they are consistent with the facts alleged in this cause of action with
 24 the same force and effect as if said paragraphs were herein set forth in full.

25 93. Revere conditions the sale to the owner of an Approved Servicing Facility of
 26 Certification Training, Competence Certificates, Inspection Stickers and Owner Certificates for
 27 RFD/Revere Brands of liferafts (the “tying products”) upon the owner’s purchase of
 28 Recertification Supplies, OEM Parts and New Liferafts (the “tied product”) from Revere, or at

1 least on the owner's not buying them from a competitor of Revere.

2 94. Revere, with regard to the sale of Certification Training, Competence Certificates,
3 Inspection Stickers and Owner Certificates for RFD/Revere Brands of liferafts to the owner of an
4 Approved Servicing Facility, has complete economic power over the customer in the tying product.
5 This market power allows Revere to affect a substantial amount of commerce in the market for the
6 tied products – said Recertification Supplies, OEM Parts and New Liferafts.

7 95. Certification Training, Competence Certificates, Inspection Stickers and Owner
8 Certificates for RFD/Revere Brands of liferafts, the tying products, are unique and indispensable to
9 Approved Servicing Facilities. There are no reasonable or adequate substitutes for the tying
10 product. The barriers to creating such substitutes are substantial and entry into the market is not
11 practicable.

12 96. The tying product and the tied product are separate and distinct from one another.
13 Certification Training, Competence Certificates, Inspection Stickers and Owner Certificates for
14 RFD/Revere Brands of liferafts are widely and publicly recognized as distinct and separate
15 products from Recertification Supplies, OEM Parts for RFD/Revere Brands of liferafts and New
16 Liferafts. Many consumers would prefer to purchase each product independently of the others.
17 Many consumers do purchase these products independently of the others.

18 97. Revere's tying arrangement has been successful. Revere has been able to force
19 purchasers of the tying product to buy the tied products from Revere. If Revere had not imposed
20 the tie-in arrangements many of these purchasers would have bought the tied product from
21 plaintiffs or another competitor of Revere.

22 98. By imposing the tying arrangement, Revere has harmed competition in the market
23 for the tied product and foreclosed a substantial volume of commerce in the market for the tied
24 product.

25 99. Revere's tying arrangement has caused injury to both buyers and sellers in the
26 market for the tied product. (a) Purchasers of Certification Training, Competence Certificates,
27 Inspection Stickers and Owner Certificates for RFD/Revere brands of liferafts have been
28 wrongfully forced to buy Recertification Supplies, OEM Parts for RFD/Revere Brands of liferafts

1 and New Liferrafts from Revere. (b) Competitors for Recertification Supplies, OEM Parts for
 2 RFD/Revere Brands of liferafts and New Liferrafts, including plaintiffs and others, have been
 3 wrongfully prevented from selling such products to these purchasers. (c) Prices for the tied
 4 product have been higher than they would be in a competitive market. (d) Supply of the tied
 5 product has been lower than it would be in a competitive market.

6 100. Revere did not impose the tie for legitimate business reasons or purposes. In any
 7 case, this arrangement imposes excessive burdens and any legitimate business purposes could be
 8 accomplished by less restrictive means.

9 101. By reason of Revere's aforesaid unlawful tying arrangement and as a direct and
 10 proximate result of such tying arrangement, plaintiffs have lost sales, profits and the value of their
 11 businesses. Plaintiffs have and will continue to suffer irreparable harm through the loss of their
 12 trade and business, and the public will be damaged by the weakening or elimination of plaintiffs
 13 and others in the market for Recertification Supplies, OEM Parts for RFD/Revere Brands of
 14 liferafts and New Liferrafts.

15 102. Revere's tying arrangement constitutes a *per se* violation of Section 1 of the
 16 Sherman Act (15 U.S.C. § 1).

17 **Wherefore**, plaintiffs pray judgment against defendant as set forth below.

18
 19 **D. Fourth Claim for Relief**
 20 **(Against Revere)**
 21 **Rule of Reason Tying**
(Section 1 of the Sherman Act, 15 U.S.C. § 1)

22 103. Plaintiffs incorporate herein by reference the allegations of paragraphs 1 through
 23 102 inclusive, above, to the extent they are consistent with the facts alleged in this cause of action,
 24 with the same force and effect as if said paragraphs were herein set forth in full.

25 104. Even if Revere's tying arrangement is not a *per se* violation of Section 1 of the
 26 Sherman Act, 15 U.S.C. § 1, Revere's tying arrangement of tying Certification Training,
 27 Competence Certificates, Inspection Stickers and Owner Certificates for RFD/Revere Brands of
 28 liferafts to Recertification Supplies, OEM Parts for RFD/Revere Brands of liferafts and New

1 Liferrafts, unreasonably restrains competition in the tied product market and constitutes a rule of
2 reason violation of Section 1 of the Sherman Act, 15, U.S.C. § 1.

3 **Wherefore**, plaintiffs pray judgment against defendant as set forth below.

4
5 **E. Fifth Claim for Relief**
6 **(Against Revere, RFD Ltd. and RFD Inc.)**
7 **Monopoly Leveraging**
8 **(Section 2 of the Sherman Act, 15 U.S.C. § 2)**

9 105. Plaintiffs incorporate herein by reference the allegations of paragraphs 1 through
10 104 inclusive, above, to the extent they are consistent with the facts alleged in this cause of action,
11 with the same force and effect as if said paragraphs were herein set forth in full.

12 106. Revere, RFD Ltd. and RFD Inc. have 100% share of the relevant markets for
13 Certification Training, Competence Certificates, Inspection Stickers and Owner Certificates for
14 RFD/Revere Brands of liferafts. Revere, RFD Ltd. and RFD Inc. have the power to control prices
15 and to exclude competition in these markets.

16 107. The barriers to entry for competitors, including plaintiffs, to get into these markets
17 are high since under the Coast Guard Regulations, only manufacturers or their agents may provide
18 Certification Training, Competence Certificates, Inspection Stickers and Owner Certificates for
19 RFD/Revere Brands of liferafts.

20 108. The prices Revere, RFD Ltd. and RFD Inc. obtain in these markets are
21 supracompetitive. These supracompetitive prices have not caused customers for Certification
22 Training, Competence Certificates, Inspection Stickers and Owner Certificates for RFD/Revere
23 Brands of liferafts to switch from Revere, RFD Ltd. and RFD Inc to competitive vendors because
24 there is no alternative source for these products under the Coast Guard Regulations. The
25 supracompetitive prices have not caused new entry or the switching of resources of competitors
26 into these markets since they cannot do so under the Coast Guard Regulations.

27 109. Revere, RFD Ltd. and RFD Inc. have used their monopoly in Certification Training,
28 Competence Certificates, Inspection Stickers and Owner Certificates for RFD/Revere Brands of
liferrafts to leverage themselves into separate and otherwise competitive relevant markets, viz. the

1 markets for Recertification Supplies, OEM Parts for RFD/Revere Brands of liferafts and New
2 Liferafts. The exercise by Revere, RFD Ltd. and RFD Inc of their monopoly in for Certification
3 Training, Competence Certificates, Inspection Stickers and Owner Certificates for RFD/Revere
4 Brands of liferafts, in order to leverage themselves into sales in the markets for Recertification
5 Supplies, OEM Parts for RFD/Revere Brands of liferafts and New Liferafts is not justified by
6 plausible arguments that these actions were intended to increase output, enhance the efficiency of,
7 lower prices of or make more competitive these markets or other markets. These actions in fact
8 injure competition and consumers, decrease output, raise prices and decrease economic efficiency
9 in said markets. The likelihood of anticompetitive effects from such actions is clear and the
10 possibility of procompetitive effects is remote.

11 110. Revere, RFD Ltd. and RFD Inc. have not used their monopoly in Certification
12 Training, Competence Certificates, Inspection Stickers and Owner Certificates for RFD/Revere
13 Brands of liferafts in the markets for Recertification Supplies, OEM Parts for RFD/Revere Brands
14 of liferafts and New Liferafts for legitimate business reasons or purposes. In any case, Revere,
15 RFD Ltd. and RFD Inc.'s use of its monopoly to leverage into the markets for Recertification
16 Supplies, OEM Parts for RFD/Revere Brands of liferafts and New Liferafts, as set out above,
17 imposes excessive burdens and any legitimate business purposes could be accomplished by less
18 restrictive means.

19 111. By reason of Revere's, RFD Ltd.'s and RFD Inc.'s monopoly leveraging plaintiffs
20 have lost sales, profits and the value of their businesses. Plaintiffs have and will continue to suffer
21 irreparable harm through the loss of their trade and business, and the public will be damaged by:
22 (a) the weakening or elimination of competition in these markets; and (b) the elimination of
23 choices for consumers in these markets; (c) the payment of supracompetitive prices for the goods
24 and services in these markets; and (d) the decrease of output in these markets.

25 112. Revere's, RFD Ltd.'s and RFD Inc.'s actions, as set out above, constitute an
26 unlawful monopolization and unlawful combinations and conspiracies to monopolize pursuant to
27 Section 2 of the Sherman Act, 15 U.S.C. § 2.

28 **Wherefore**, plaintiffs pray judgment against defendants as set forth below.

Sixth Claim for Relief
(Against RFD Ltd., RFD Inc. and Revere)
Attempted Monopolization
(Section 2 of the Sherman Act, 15 U.S.C. § 2)

113. Plaintiffs incorporate herein by reference the allegations of paragraphs 1 through 112 inclusive, above, to the extent they are consistent with the facts alleged in this cause of action, with the same force and effect as if said paragraphs were herein set forth in full.

114. The aforesaid actions of Revere, RFD Ltd. and RFD Inc. were engaged in with the purpose and intent to injure, suppress, destroy and irreparably harm plaintiffs and other competitors as vital competitors in the markets for Recertification Supplies and OEM Parts for RFD/Revere Brands of liferafts.

115. Said actions of Revere, RFD Ltd. and RFD Inc. have created and create a dangerous probability that Revere, RFD Ltd. and RFD Inc. will succeed in injuring, suppressing, destroying and irreparably harming plaintiffs and others as vital competitors in these markets and succeed in achieving monopoly power. These actions of Revere, RFD Ltd. and RFD Inc. are not justified by plausible arguments that these actions were intended to increase output, enhance the efficiency of, lower prices of or make more competitive these markets or other related markets. These actions in fact injure competition and consumers, decrease output, raise prices and decrease economic efficiency in said markets. The likelihood of anticompetitive effects from such actions is clear and the possibility of procompetitive effects is remote.

116. By reason of Revere, RFD Ltd. and RFD Inc.'s aforesaid actions and as a direct and proximate result of such actions, plaintiffs have lost sales, profits and the value of their businesses. Plaintiffs have and will continue to suffer irreparable harm through the loss of their trade and business, and the public will be damaged by: (a) the weakening or elimination of competition in these markets; and (b) the elimination of choices for consumers in these markets; and (c) the payment of supracompetitive prices for the goods and services in these markets.

///

117. Revere, RFD Ltd. and RFD Inc.'s aforesaid actions constitute an unlawful attempt to monopolize the relevant markets for Recertification Supplies and OEM Parts for RFD/Revere

1 Brands of liferafts.

2 **Wherefore**, plaintiffs pray judgment against defendants as set forth below.

3
4 **H. Seventh Claim for Relief**
5 **(Against Revere, RFD Ltd. and RFD Inc.)**
6 **Violations of the Code of Federal Regulations**
(46 CFR §§ 160.151-1, et seq.)

7 118. Plaintiffs incorporate herein by reference the allegations of paragraphs 1 through
8 117 inclusive, above, to the extent they are consistent with the facts alleged in this cause of action,
9 with the same force and effect as if said paragraphs were herein set forth in full.

10 119. 46 CFR § 160.151-41 gives the Coast Guard direct and exclusive control over the
11 process by which an owner or operator obtains certification for an Approved Servicing Facility.
12 Manufacturers have no direct or indirect control over authorization of Approved Servicing
13 Facilities. Manufacturers cannot arbitrarily or unilaterally cause the withdrawal of an Approved
14 Servicing Facility's approval by the Coast Guard by refusing Certification Training.
15 Manufacturers cannot cause withdrawal of an Approved Servicing Facility's approval by the Coast
16 Guard by refusing Certification Training in order to carry out unlawful conduct, including violation
17 of any antitrust or unfair competition laws.

18 120. 46 CFR § 160.151-35 requires the manufacturer of a liferaft, like defendants
19 Revere, RFD Ltd. and RFD Inc., to have a training program for the certification of Servicing
20 Technicians for the Servicing of liferafts of that manufacturer's brand. 46 CFR § 160.151-39
21 requires the manufacturer to maintain refresher training for recertification of previously trained
22 Servicing Technicians for that manufacturer's brand.

23 121. Revere, RFD Ltd. and RFD Inc. have repeatedly failed to have a training program
24 for the certification and recertification of Servicing Technicians for RFD/Revere Brands of
25 liferafts, in violation of 46 CFR §§ 160.151-35 and 160.151-39, in order arbitrarily and
26 unilaterally to cause the withdrawal of an Approved Servicing Facility's approval by the Coast
27 Guard by refusing Certification Training. They have failed to do so for USA Services, Sea Safe
28 Services, Inc., Sea Safety International, Datrex and COMAR, as set out above.

122. 46 CFR §§ 160.151-39(a)(3) and 160.151-39(b)(5) require the manufacturer to issue a Certificate of Competence to each technician who has successfully completed Certification Training.

123. RFD Ltd. and Revere have repeatedly failed to issue a Competence Certificate to Servicing Technicians who have successfully completed Certification Training, in violation of 46 CFR §§ 160.151-35 and 160.151-39. These include Competence Certificates for Sea Safe Services, Inc., Datrex, Marine Safety and COMAR, as set out above.

Wherefore, plaintiffs pray judgment against defendants as set forth below.

H. Eighth Claim for Relief
(Against Revere, RFD Ltd. and RFD Inc.)
Federal Declaratory Judgment Act
(28 U.S.C. §§ 2201 et seq. and Fed. R. Civ. Proc. 57)

124. Plaintiffs incorporate herein by reference the allegations of paragraphs 1 through 123 inclusive, above, to the extent they are consistent with the facts alleged in this cause of action, with the same force and effect as if said paragraphs were herein set forth in full.

125. An actual controversy has arisen and now exists between plaintiffs and defendants Revere, RFD Ltd. and RFD Inc. relating to the following: (a) the requirements for Revere, RFD Ltd. and RFD Inc. under the Coast Guard Regulations to provide, Certification Training, Competence Certificates, Inspection Stickers and Owner Certificates for RFD/Revere Brands of liferafts; and (b) the enforcability of Revere's Distribution Agreements and Service Station Agreements.

126. These constitute an actual, present and ongoing controversy. Revere has failed to provide Inspection Stickers to COMAR except on condition that they purchase other items in March 2002. Revere, RFD Ltd. and RFD Inc. have failed to provide Certification Training for RFD/Revere Brands of liferafts in July 2004 except on the condition that the Approved Servicing Facilities purchase Recertification Supplies, OEM Parts for RFD/Revere Brands of liferafts and New Liferafts from Revere. Revere has required in its Distribution Agreement and Service Station Agreement, on threat of withdrawing Certification Training for RFD/Revere Brands of

liferrafts, that Approved Servicing Facilities purchase from them Recertification Supplies, OEM Parts for RFD/Revere Brands of liferafts and New Liferrafts.

127. A declaratory judgment is necessary in that plaintiffs contend and defendants Revere, RFD Ltd. and RFD Inc. deny the following: (a) that Revere and RFD Ltd. under the Coast Guard Regulations are required to provide to plaintiffs and other Approved Servicing Facilities with Certification Training, Competence Certificates, Inspection Stickers and Owner Certificates for RFD/Revere Brands of liferafts and not arbitrarily and unilaterally or for any illegal purpose to cause the withdrawal of an Approved Servicing Facility's approval by the Coast Guard by refusing them Certification Training; and (b) that the Distribution Agreements and Service Station Agreements of Revere with other Approved Servicing Facilities for RFD/Revere Brands of liferafts are illegal and unenforceable.

128. A declaratory judgment would be appropriate because it would serve a useful purpose in clarifying and settling the legal relations at issue and because it would terminate and afford relief from the uncertainty and controversy giving rise to this proceeding. Plaintiffs have joined their other claims for relief in this action with the claim for a declaratory judgment because this court is best able to resolve the entire controversy, including federal and state claims.

Wherefore, plaintiffs pray judgment against defendants as set forth below.

I. Ninth Claim for Relief
(Against Revere, RFD Ltd. and RFD Inc.)
Violations of the Cartwright Act
(California Business & Professions Code §§ 16720, 16726 and 16727)

129. Plaintiffs incorporate herein by reference the allegations of paragraphs 1 through 128 inclusive, above, to the extent they are consistent with the facts alleged in this cause of action, with the same force and effect as if said paragraphs were herein set forth in full.

130. Defendants Revere, RFD Ltd. and RFD Inc., and each of them combined, conspired and agreed, beginning in 1992, to give to Revere exclusive control over Certification Training, Competence Certificates, Inspection Stickers and Owner Certificates for RFD/Revere Brands of liferafts in the United States and in California, over the selling of OEM Parts for RFD/Revere Brands of liferafts in the United States and over the sale of new RFD/Revere Brands of liferafts in

1 the United States. Said defendants, and each of them, combined, conspired and agreed to allow
2 Revere to use the exclusive control over Certification Training, Competence Certificates,
3 Inspection Stickers and Owner Certificates for RFD/Revere Brands of liferafts in the United States
4 and in California in order to force Approved Servicing Facilities to purchase from Revere their
5 Recertification Supplies, OEM Parts for RFD/Revere Brands of liferafts and New Liferafts and in
6 order to create exclusive Servicing areas for RFD/Revere Brands of liferafts by terminating or
7 denying Certification Training to competitors in such areas. Said defendants, and each of them,
8 combined, conspired and agreed to allow Revere to obtain Distributor Agreements and Service
9 Station Agreements from Approved Servicing Facilities for RFD/Revere Brands of liferafts which
10 agreements carried out Revere's unlawful actions.

11 131. In furtherance of their unlawful combinations, conspiracies and agreements,
12 defendants, and each of them, have refused Certification Training, Competence Certificates,
13 Inspection Stickers and Owner Certificates for RFD/Revere Brands of liferafts in the United States
14 and in California to Approved Servicing Facilities and forced Approved Servicing Facilities to
15 purchase from Revere their Recertification Supplies, OEM Parts for RFD/Revere Brands of
16 liferafts and New Liferafts that they would not otherwise have purchased or could have purchased
17 at lower prices from competitors of Revere.

18 132. As a direct consequence of the acts of defendants, and each of them, competition in
19 Servicing of RFD/Revere Brands of liferafts, Recertification Supplies, OEM Parts for RFD/Revere
20 Brands of liferafts and New Liferafts has been restrained and suppressed. Purchasers of Servicing
21 for RFD/Revere Brands of liferafts, Recertification Supplies, OEM Parts for RFD/Revere Brands
22 of liferafts and New Liferafts in California have been deprived of the benefit of free competition
23 for these products and have been forced to purchase quantities of these products from Revere that
24 they would not otherwise have purchased.

25 133. As a direct consequence of the agreements, acts, and course of conduct of
26 defendants, and each of them, plaintiffs have been damaged by the loss of sales for Servicing of
27 RFD/Revere Brands of liferafts, Recertification Supplies and OEM Parts for RFD/Revere Brands
28 of liferafts and have been forced to purchase Recertification Supplies, OEM parts for RFD/Revere

1 Brands of liferafts and New Liferafts from Revere that they would not otherwise have purchased.

2 134. The aforesaid combinations, conspiracies and agreements violate California
3 Business & Professions Code §§ 16729, 16726 and 16727 in that they are unlawful restraints of
4 trade, horizontal market divisions, horizontal boycotts, exclusive dealing arrangements and tying
5 agreements.

6 **Wherefore**, plaintiffs pray judgment against defendants as set forth below.

7
8 **J. Tenth Claim for Relief**
9 **(Against Revere)**
10 **Tortious Interference With Business Relations**
11 **(State Statutory and Common Law)**

12 135. Plaintiffs incorporate herein by reference the allegations of paragraphs 1 through
13 134 inclusive, above, to the extent they are consistent with the facts alleged in this cause of action
14 with the same force and effect as if said paragraphs were herein set forth in full.

15 136. Plaintiffs had valid business relationships and definite and specific prospective
16 advantage and expectancy with Approved Servicing Facilities for RFD/Revere Brands of liferafts.
17 There was a reasonable probability of these business relationships of plaintiffs maturing into future
18 economic benefits to plaintiffs by them obtaining sales of Recertification Supplies and OEM Parts
19 for RFD/Revere Brands of liferafts to such Approved Servicing Facilities.

20 137. Revere had knowledge of these business relationships and definite and specific
21 prospective advantages and expectancies of plaintiffs.

22 138. Revere had and exhibited in their actions a purposeful intent to interfere with these
23 business relationships and definite and specific prospective advantages and expectancies of
24 plaintiffs.

25 139. These actions by Revere were independently unlawful acts in that they violated:
26 (a) Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1 and 2; (b) the United States Coast Guard
27 Regulations at 46 CFR § 160.151-1 et seq.; (c) the Cartwright Act and (d) California Business and
28 Professions Code § 17200, et seq.

140. Revere's interference with these business relationships and definite and specific prospective advantages and expectancies of plaintiffs directly and proximately caused the impairment of plaintiffs' relationships, advantages and expectancies.

141. As a direct and proximate cause of the impairment of plaintiffs' relationships, advantages and expectancies, plaintiffs have been damaged by the loss of sales, profits and the value of their businesses.

142. The acts and omissions of Revere, identified above, were performed intentionally, with malice and oppression and with a conscious disregard for plaintiffs' rights. Such conduct thus constitutes despicable conduct and plaintiffs are entitled to recover punitive damages and exemplary damages according to proof.

Wherefore, plaintiffs pray judgment against defendant as set forth below.

K. Eleventh Claim for Relief

(Against Revere)

**Unlawful, Unfair and Fraudulent Business Acts and Practices
(California Business & Professions Code § 17200 et seq.)**

143. Plaintiffs incorporate herein by reference the allegations of paragraphs 1 through 142 inclusive, above, to the extent they are consistent with the facts alleged in this cause of action, with the same force and effect as if said paragraphs were herein set forth in full.

144. Revere has committed acts of unfair competition, specifically, unlawful, unfair or fraudulent business acts and practices as defined by Business and Professions Code section 17200, *et seq.*, by their conduct, as alleged above.

145. The above actions of Revere constitute unfair business practices in the state of California. The unfair business practices committed by Revere were committed with the intent, design, and purpose: to obtain exorbitant, supracompetitive prices for Servicing RFD/Revere Brands of liferafts, for Recertification Supplies and for OEM Parts for RFD/Revere Brands of liferafts; to deprive competitors of the ability to compete for customers, thereby to illegally increase the profits of Revere.

146. The unlawful practices alleged above are continuing in nature and are widespread practices engaged in by Revere.

147. On behalf of the general public in the state of California, plaintiffs respectfully request that an injunction against Revere issue to enjoin them from continuing to engage in the unlawful conduct and acts, and each of them, as alleged herein.

148. On behalf of the general public in the state of California, plaintiffs respectfully request that an order issue directing Revere to disclose where the above unlawful practices were employed, with appropriate notification sent to customers who have been subjected to such unlawful practices, so as to allow a review, and re-evaluation of the status of their contracts and payments made under those contracts and of their continuing obligations under those contracts, if any.

149. On behalf of the general public in the state of California, plaintiffs respectfully request that this Court order Revere to restore all of the monies unlawfully obtained by Revere in the form of profits and otherwise.

150. On behalf of the general public in the state of California, plaintiffs respectfully request that this Court order any other and further equitable relief deemed necessary by the Court.

151. Plaintiffs seek only restitution of the monies unlawfully received by Revere by way of this cause of action. The remedies sought herein are exclusively equitable and are sought on behalf of customers of Revere in California, of Revere competitors in California and of the general public in California who have been victimized by the unlawful practices alleged herein.

152. Plaintiffs respectfully request an award of reasonable attorneys' fees to counsel prosecuting this action upon their prevailing in this request for equitable relief, as authorized by the California Business and Professions Code § 17200, *et seq.*

Wherefore, plaintiffs pray judgment against defendant as set forth below.

///

VIII. Prayer for Relief

Plaintiffs respectfully request that this Court order, adjudge and decree:

- 1 A. Defendants Revere's, RFD Ltd.'s and RFD Inc.'s conduct, as alleged, unlawful
2 under Section 1 of the Sherman Act (15 U.S.C. § 1);
- 3 B. Defendants Revere's, RFD Ltd.'s and RFD Inc.'s conduct, as alleged, unlawful
4 under Section 2 of the Sherman Act (15 U.S.C. § 2);
- 5 C. Defendants Revere's, RFD Ltd.'s and RFD Inc.'s conduct, as alleged, unlawful
6 under 46 CFR §§ 160-151-1 *et seq.*;
- 7 D. Defendants Revere's, RFD Ltd.'s and RFD Inc.'s conduct, as alleged, unlawful
8 under the Cartwright Act, California Business & Professions Code §§ 16720,
9 16726-27;
- 10 E. Defendant Revere's conduct, as alleged, unlawful as tortious interference with
11 plaintiffs' prospective business relations;
- 12 F. Defendant Revere's conduct, as alleged, unlawful under California Business &
13 Professions Code § 17200 *et seq.*;
- 14 G. Defendants Revere, RFD Ltd. and RFD Inc. as well as their officers, agents,
15 servants employees and attorneys and those persons in active concert or
16 participation with them who shall receive actual notice of the Court's injunction, be
17 enjoined preliminarily and permanently from continued engagement in those acts,
18 forms of conduct and practices found to be unlawful;
- 19 H. Defendant Revere makes restitution of the monies and property as a result of its
20 acts, forms of conduct and practices found to be illegal under California Business &
21 Professions Code § 17200 *et seq.*;
- 22 I. Plaintiffs, and each of them, recover from defendants Revere, RFD Ltd. and RFD
23 Inc. threefold their actual damages sustained as a result of said defendants' federal
24 and state antitrust and unfair competition violations;
- 25 J. Plaintiffs and each of them, recover from defendants Revere, RFD Ltd. and RFD
26 Inc. their costs and reasonable attorney fees as provided by the Clayton Act, the
27 Cartwright Act and the California Business and Professions Code Unfair
28 Competition Act;

- 1 K. Plaintiffs and each of them, recover from defendant Revere punitive and exemplary
2 damages for tortious interference with business relations;
- 3 L. Plaintiffs, and each of them, and others to whom defendants Revere, RFD Ltd. and
4 RFD Inc. are liable for restitution, recover from defendants, jointly severally,
5 prejudgment and post-judgment interest on any award; and
- 6 M. Plaintiffs, and each of them, and others who have been injured by defendants'
7 unlawful actions be awarded such other and further relief in law or in equity as the
8 Court may deem just and proper in the premises.

9
10 Dated: February 8, 2005

HENNEFER & WOOD

11
12 By _____
13 James A. Hennefer
14 Attorneys for Plaintiffs
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR JURY TRIAL

Pursuant to the Seventh Amendment to the Constitution of the United States, Rule 38(a) and (b) of the Federal Rules of Civil Procedure, and similar provisions of any state of the United States that apply, plaintiffs demand a trial by jury of all issues triable of right by jury.

Dated: February 8, 2005

HENNEFER & WOOD

By /s/ James A. Hennefer
James A. Hennefer
Attorneys for Plaintiffs